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8     Netflix, Inc., and  
8     Netflix Worldwide Entertainment, LLC

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

12 FIONA HARVEY,  
13 Plaintiff

v.  
15 NETFLIX, INC., and NETFLIX  
16 WORLDWIDE ENTERTAINMENT,  
LLC.

|Case No. 2:24-cv-04744-RGK-AJR

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S REQUEST FOR  
JUDICIAL NOTICE IN OPPOSITION  
TO DEFENDANTS' MOTION TO  
DISMISS**

Date: September 16, 2024  
Time: 9:00 a.m.  
Place: Courtroom 850

Hon. R. Gary Klausner

1     **I. INTRODUCTION.**

2         Defendants Netflix, Inc. and Netflix Worldwide Entertainment, LLC  
3 (collectively, “Netflix”) hereby submit this Opposition to Plaintiff Fiona Harvey’s  
4 (“Harvey’s”) Request for Judicial Notice in Opposition to Defendants’ Motion to  
5 Dismiss (“Request”).

6         Under Rule 201 of the Federal Rules of Evidence, courts may take judicial  
7 notice of any fact that is “not subject to reasonable dispute because it: (1) is generally  
8 known within the trial court’s territorial jurisdiction; or (2) can be accurately and  
9 readily determined from sources whose accuracy cannot reasonably be questioned.”  
10 Fed. R. Evid. 201(b). However, courts do not take judicial notice of documents in  
11 their entirety; they take judicial notice of specific facts within those documents or  
12 facts from the existence of the documents themselves. In fact, courts routinely deny  
13 requests for judicial notice that fail to identify the facts or purposes for which the  
14 party requests judicial of the document.

15         Harvey’s Request fails for this reason. She does not identify any specific facts  
16 within Exhibits 1-4 and 7-9 of the Levenson Declaration that she seeks to have  
17 judicially noticed, nor does she articulate any purpose for which these documents  
18 should be noticed. For instance, Harvey requests judicial notice of Exhibit 1, a 34-  
19 page transcript of a May 8, 2024 hearing in the House of Commons, without  
20 specifying which facts or for what purpose she seeks judicial notice of this entire  
21 transcript. This deficiency is consistent across Exhibits 2-4 and 7-9 and merits denial  
22 of Harvey’s Request in its entirety.

23         Moreover, even if this Court were to consider taking judicial notice of these  
24 documents, it should deny the Request because the documents are either irrelevant  
25 or improperly utilized for the truth of their contents. For example, Exhibits 1 and 3  
26 contain statements by Netflix’s Senior Director of Public Policy to Parliament,  
27 which are irrelevant to the resolution of Defendants’ Motion to Dismiss Complaint  
28 (the “Motion”) and are privileged under Cal. Civ. Code § 47(b). Similarly, Exhibits

1 2, 4, 7, 8, and 9 are irrelevant to the matters at hand, as evidenced by Harvey’s failure  
2 to even cite or rely on these documents anywhere in her Opposition to Defendants’  
3 Motion to Dismiss (the “Opposition”).

4 For these reasons, and as further detailed below, this Court should deny  
5 Harvey’s Request for Judicial Notice in its entirety.

6 **II. ARGUMENT.**

7 This Court should deny Harvey’s Request outright. Under Rule 201 of the  
8 Federal Rules of Evidence, courts may take judicial notice of any fact that is “not  
9 subject to reasonable dispute because it: (1) is generally known within the trial  
10 court’s territorial jurisdiction; or (2) can be accurately and readily determined from  
11 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A  
12 court “must take judicial notice if a party requests it and the court is supplied with  
13 the necessary information.” Fed. R. Evid. 201(c)(2).

14 That said, “[c]ourts do not take judicial notice of documents, they take judicial  
15 notice of facts. The existence of a document could be such a fact, but only if the  
16 other requirements of Rule 201 are met.” *Cruz v. Specialized Loan Servicing, LLC*,  
17 No. SACV 22-01610-CJC (JDEEx), 2022 WL 18228277, at \*2 (C.D. Cal. Oct. 14,  
18 2022) (citation and internal brackets omitted).

19 Accordingly, “[a] court must ‘consider—and identify—which fact or facts it  
20 is noticing’ from a document.” *Easton v. Wells Fargo & Co.*, No. 2:20-cv-06070-  
21 AB-RAO, 2023 WL 6194043856, at \*4 (C.D. Cal. Aug. 18, 2023) (quoting *Khoja*  
22 v. *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018)). And “[a] court  
23 may consider the purpose of judicial notice to determine which facts are noticeable.”  
24 *Id.* “As a result, the requesting party should accordingly identify what facts within  
25 the document it seeks to have judicially noticed.” *United States v. Bychak*, No. 18-  
26 CR-4683-GPC, 2021 WL 734371, at \*4 (S.D. Cal. Feb. 25, 2021).

27 Courts therefore routinely deny requests for judicial notice of documents  
28 when the requests fail to identify the purpose or facts that the party seeks judicial

1 notice of. *See, e.g., Capaci v. Sports Rsch. Corp.*, 445 F. Supp. 3d 607, 617 (C.D.  
2 Cal. 2020) (denying judicial notice when requesting party “simply requests that the  
3 court take judicial notice of the documents in their entirety”); *Bradford v. Dejesus*,  
4 No. 2:21-cv-1411 KJM CKD P, 2022 U.S. Dist. LEXIS 226305, at \*2-3 (E.D. Cal.  
5 Dec. 14, 2022) (“Because plaintiff does not identify any facts which should be  
6 judicially noticed or are worthy of judicial notice in this case, his request is **denied.**”)  
7 (emphasis in original); *Riley v. Chopra*, No. CV 18-3371 FMO (SKx), 2020 WL  
8 5217154, at \*2 (C.D. Cal. June 19, 2020) (finding requesting party’s arguments  
9 “unpersuasive” given party’s failure to identify what facts were to be judicially  
10 noticed); *DalPoggetto v. Wirecard AG*, No. CV 19-0986 FMO (SKx), 2020 WL  
11 2374948, at \*2 (C.D. Cal. Apr. 15, 2020) (denying the defendant’s request for  
12 judicial notice where the defendant had only requested that the court notice whole  
13 documents rather than specific facts).

14 Harvey’s Request does not identify any facts that she seeks to have judicially  
15 noticed from Exhibits 1-4 and 7-9 of the Levenson Declaration. Nor does she  
16 identify or articulate any purpose for which she seeks to have the documents  
17 judicially noticed. For example, Harvey requests that this Court take judicial notice  
18 of Exhibit 1, a 34-page transcript of a May 8, 2024 hearing in the House Commons  
19 without any details as to what facts or purpose she is seeking to have judicially  
20 noticed from the transcript. Request at 4-5. Harvey’s requests to judicial notice  
21 Exhibits 2-4 and 7-9 suffer from the same infirmity—at no point in her Request does  
22 Harvey identify the facts she seeks the Court to take judicial notice of from the  
23 documents. *See generally* Request. For this reason, Harvey’s Request for judicial  
24 notice of Exhibits 1-4 and 7-9 of the Levenson Declaration should be denied. *See*  
25 *Capaci*, 445 F. Supp. 3d at 617 (denying request for judicial notice when requesting  
26 party “simply requests that the court take judicial notice of the documents in their  
27 entirety”).

28

1        In the event this Court does not deny Harvey's Request in their entirety for  
2 failing to identify the facts she seeks to have judicially noticed, this Court should  
3 nevertheless deny her Request because Exhibits 1-4 and 7-9 are either irrelevant or  
4 improperly utilized for the truth of their contents.

5        ***Levenson Decl. Exs. 1 and 3.*** This Court should not take judicial notice of  
6 Exhibits 1 and 3 because they are irrelevant. Exhibits 1 and 3 include statements by  
7 Netflix's Senior Director of Public Policy, Mr. King, to Parliament. Mr. King's  
8 statements in these exhibits are irrelevant as they are not identifiable statements of  
9 fact about *Harvey* as they never mention Harvey and no reasonable person would  
10 understand statements in these Exhibits to concern her. Regardless, statements  
11 before Parliament are privileged under Cal. Civ. Code § 47(b) and cannot form the  
12 basis of a defamation claim. *See Scott v. McDonnell Douglas Corp.*, 37 Cal. App.  
13 3d 277, 288, 293 (1974); *Pettitt v. Levy*, 28 Cal. App. 3d 484, 488 (1972).<sup>1</sup> The  
14 documents are therefore irrelevant to the resolution of Defendants' Motion and this  
15 Court should deny Harvey's request for judicial notice as to Exhibits 1 and 3 to the  
16 Levenson Declaration. *See Elliot v. Lions Gate Ent. Corp.*, 639 F. Supp. 3d 1012,  
17 1022 (C.D. Cal. 2022) (denying request for judicial notice because the "materials  
18 [were] not relevant to the resolution of [d]efendants' [m]otion") (internal quotation  
19 marks omitted).

20        Even if this Court were to consider taking judicial notice of these irrelevant  
21 and unactionable documents, the Court should not take judicial notice of these  
22 documents because Harvey seeks to utilize them for the truth of the matters asserted  
23 therein. *See Coal. for a Sustainable Delta v. FEMA*, 812 F. Supp. 2d 1089, 1093  
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25        <sup>1</sup> Netflix raised this argument in its Motion. *See* Motion at 9 n.4. Harvey failed to  
26 respond in her Opposition and has thus conceded this point. *See Stichting  
27 Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D.  
28 Cal. 2011) ("[I]n most circumstances, failure to respond in an opposition brief to an  
argument put forward in an opening brief constitutes waiver or abandonment in  
regard to the uncontested issue.").

1 (E.D. Cal. 2011) (“Public records are subject to judicial notice under [Rule] 201 to  
2 prove their existence and content, but not for the truth of the matters asserted  
3 therein.”). For example, Harvey attempts to use Exhibit 3 to the Levenson  
4 Declaration to establish Netflix’s actual malice by using Exhibit 3 to establish that  
5 “Netflix not only had doubts about its story, it *knew* it was not true.” Opp. at 15; *see*  
6 *also id.* at 10. Judicial notice should not, and cannot, be used to establish disputed  
7 facts. As a result, this Court should deny Harvey’s request here.

8       **Levenson Decl. Exs. 2 and 7.** This Court should similarly deny Harvey’s  
9 request for judicial notice for these documents. Exhibits 2 and 7 to the Levenson  
10 Declaration are both irrelevant because they cannot be used as an identifiable  
11 statement of fact about Harvey. These documents never mention Harvey and no  
12 reasonable viewer of the Series would understand any statement in these documents  
13 to concern her. Moreover, Harvey concedes the irrelevance of these documents as  
14 she does not attempt to rely on or even cite Exhibit 7 in her Opposition. *See*  
15 *generally* Opposition. As a result, these documents are irrelevant, and any fact  
16 contained therein should not be judicially noticed. *See Pac. Gas & Elec. Co. v.*  
17 *Lynch*, 216 F. Supp. 2d 1016, 1025 (N.D. Cal. 2002) (declining to take judicial notice  
18 of settlement agreement between defendants and the SEC because the documents  
19 were not relevant to the instant dispute). Moreover, in the event this Court takes  
20 judicial notice of these documents, it should not do so for the truth of the matters  
21 asserted therein. *See Elliot*, 639 F. Supp. 3d at 1022 (courts may take judicial notice  
22 of publications “to illustrate what ‘was in the public realm at the time, [although] not  
23 whether the contents of those articles were in fact true.’” (quoting *Makaeff v. Trump*  
24 *Univ.*, LLC, 715 F.3d 254, 259 (9th Cir. 2013)).

25       **Levenson Decl. Ex. 4.** This Court should deny Harvey’s Request to take  
26 judicial notice of Exhibit 4 to the Levenson Declaration as the document and any  
27 facts therein are irrelevant, and Harvey improperly utilizes this exhibit for the truth  
28 of its contents. Exhibit 4 is a website purportedly “explaining the process of

1 becoming a Member of Parliament.” Request at 2. The process of becoming a  
2 Member of Parliament is irrelevant to Defendants’ Motion or Harvey’s Complaint.  
3 Indeed, Harvey’s Opposition demonstrates the irrelevance of this exhibit as she does  
4 not cite to it or attempt to rely on it at any point. *See generally* Opp. This Court  
5 should deny Harvey’s Request to take judicial notice of a document that even Harvey  
6 considers irrelevant to the matters at hand. *See Elliot*, 639 F. Supp. 3d at 1022  
7 (denying request for judicial notice “because the Court finds these materials not  
8 relevant to the resolution of Defendants’ Motion.”).

9       ***Levenson Decl. Ex. 8.*** This Court should decline to take judicial notice of  
10 Exhibit 8 to the Levenson Declaration because it is irrelevant for deciding the matters  
11 at hand as Harvey does not cite or rely on the tweet anywhere in her Opposition. *See*  
12 *Elliot*, 639 F. Supp. 3d at 1022.

13       ***Levenson Decl. Ex. 9.*** The Court should deny Harvey’s request to judicially  
14 notice excerpts from Netflix’s 2024 10-K filing with the Securities and Exchange  
15 Commission because the SEC filing is irrelevant to decide the matters before this  
16 Court. Indeed, Harvey admits as much because she does not attempt to cite or rely  
17 on Exhibit 9 at any point in her Opposition. *See generally* Opposition. For this  
18 reason, the Court should deny Harvey’s request. *See Elliot*, 639 F. Supp. 3d at 1022.<sup>2</sup>

19 **III. CONCLUSION**

20       For the foregoing reasons, Netflix respectfully requests that this Court deny  
21 Harvey’s Request in its entirety.

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26       <sup>2</sup> Harvey argues that Exhibits 2, 8, and 9 can be judicially noticed for the additional  
27 reason that they are incorporated by reference in the Complaint. Request at 5, 7.  
28 However, this is not so. As stated above, Exhibits 2, 8, and 9 are irrelevant and for  
a document to be incorporated by reference, there “must be no disputed issues as to  
the document’s relevance.” *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th  
Cir. 2010).

1 Dated: September 3, 2024

Respectfully submitted,

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4 By /s/ Marvin S. Putnam  
5 Marvin S. Putnam  
6 Attorney for Defendants  
7 Netflix, Inc., and Netflix Worldwide  
8 Entertainment, LLC

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